

In re Appln. of: Frank FRIEDLAND
Appln. No.: 10/678,970
Attorney docket: 7320-X03-006

Group Art Unit:3764

REMARKS

Applicant acknowledges the care taken by the Examiner in examining the amended and new claims 1 to 20 and for the comments in the last Office Action with respect thereto. This examination was very helpful in reviewing the invention presented in this application and in redrafting new claims that more appropriately express the inventive concept disclosed and taught herein. Accordingly, the twenty claims, claims 1 to 20, have been cancelled in favor of a reduced number of claims, eleven new claims 21 to 31. The newly drafted claims 21 to 31 now clearly express the inventive concept and distinguish patentably from the prior art cited of record.

Claim 21 is reproduced below with the limitations set out in italics showing the novelty and unobviousness:

22. (New) A massage device comprising:

(a) an elongated main body composed of a thin flat flexible molded plastic sheet having upper and lower surfaces;

(b) said elongated main body being molded into a fancifully configuration in the outline of a hand having a first end portion of the elongated main body constituting the heel of the hand, and having a second end portion of the elongated main body formed with a plurality of first elongated thin flexible strips,

(c) each said strip at one end being integral with the main body and being cantilevered in a longitudinal direction away from the main body and terminating in a free end, the extreme tip of which defines a flat substantial contact massage surface extending transversely;

(d) the first elongated strips at their free ends being spaced apart to simulate fingers splayed;

(e) a second elongated strip integral with the main body extending from one side of the main body cantilevered at an angle to simulate a thumb and terminating in a free end, the extreme tip of which defines a flat substantial contact massage surface extending transversely;

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(f) the first and second elongated strips being curved slightly downwardly and at their free ends depending downwardly at an angle so that the extreme tips with the flat substantial contact massage surfaces face downwardly;

(g) a projection, integrally molded with the elongated main body, projecting downwardly from the lower surface of the elongated main body adjacent the first end of the elongated main body and terminating in a free end having a flat substantial contact surface facing downwardly; and

(h) a battery-operated vibration motor mounted on the elongated main body to induce vibrations in said main body, for transmission to the substantial contact surfaces.

None of the prior art cited of record shows a thin flat molded plastic sheet in a device of this nature. Former claims 1-2, 4-12, 15-20 were rejected under 103(a) as being unpatentable over Zwezdaryk in view of Clark along with Burchart. Zwezdaryk shows a vibrator in the form of a three dimension hand that can be placed in a variety of positions by bending the hand or fingers, see Figs 3 to 8. This reference does not use or teach a thin molded plastic sheet, nor claimed limitations (b) to (h), nor are they obvious from this reference whose disclosure and teaching is dichotomous. Clark shows a vibrating three dimensional back scratcher that uses a three dimensional hand. Adding Clark to Zwezdaryk either destroys the teaching of Zwezdaryk or adds nothing to it with respect to the claimed invention as set forth in claim 21. Burchart shows a vibration motor mounted on a massage device and adds nothing to the combination of Zwezdaryk and Clark. These three references combined do not show or teach the claimed limitations in claim 21. The invention as recited in claim 21 teaches a specific structure that utilizes a thin flat molded plastic sheet that is formed to the outline of a hand with fingers splayed. The fingers are formed by cantilevered extensions of the molded sheet that are curved slightly downwardly and terminate with their extreme tips having transverse flat contact massage surfaces depending downwardly so that the transverse flat contact surfaces face downwardly. The cited prior art does not show these limitations.

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Nor does the prior art show "a projection, integrally molded with the elongated main body, projecting downwardly from the lower surface of the elongated main body adjacent the first end of the elongated main body and terminating in a free end having a flat substantial contact surface facing downwardly."

The reference to Kuiken was also cited in the Office Action and deserves comment. This reference shows an exercise device for carpal tunnel syndrome and utilizes a spring steel leaf spring curled at the front to fit over fingers curled under to form a fist. The exercise is demonstrated in Fig. 2. In place of spring steel, a fiber reinforced resin that will resist a stress of 3 to 5 psi can be used. The exercise is to alternately relax and flex the hand. There is no teaching in this reference regarding the flat contact massage surfaces to perform a vibration massage. There is no basis for any combination of this reference with any other cited reference; in fact, to do so would destroy the teachings of the combined references.

Finally, a short comment regarding the combining of references with respect to the newly presented claims 21 to 31. Whereas it is definitely fair game to combine references where there is a basis for the combination, however, if the only basis is applicant's claims, and the proposed combination is only hindsight, that is not fair game. The newly presented claims 21 to 31 clearly define a patentable invention over the art cited of record.

In light of the foregoing remarks, this application should be in condition for allowance, and early passage of this case to issue is respectfully requested. If there are any questions regarding this amendment or the application in general, a telephone call to the undersigned would be appreciated since this should expedite the prosecution of the application for all concerned.

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It is respectfully requested that, if necessary to effect a timely response, this paper be considered as a Petition for an Extension of Time, time sufficient, to effect a timely response, and shortages in this or other fees, be charged, or any overpayment in fees be credited, to the Deposit Account of the undersigned, Account No. 500601 (Docket no. 7320-X03-006)

Respectfully submitted,



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